

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

HANS A. QUAACK, ATTILIO PO  
and KARL LEIBINGER, on behalf of themselves  
and those similarly situated  
Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK  
BELGIUM (formerly known  
as ARTESIA BANKING CORP S.A.)

Defendants

No. 03-CV-11566 (PBS)

STONINGTON PARTNERS, INC., a Delaware  
Corporation, STONINGTON CAPITAL  
APPRECIATION 1994 FUND L.P., a Delaware  
Partnership and STONINGTON HOLDINGS, L.L.C., a  
Delaware limited liability company,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM  
(formerly known as ARTESIA BANKING CORP., SA),  
Defendants.

No.: 04-CV-10411 (PBS)

GARY B. FILLER and LAWRENCE PERLMAN,  
Trustees of the TRA Rights Trust,  
Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM  
(formerly known as ARTESIA BANKING CORP., SA),  
Defendants.

No.: 04-CV-10477 (PBS)

JANET BAKER and JAMES BAKER, JKBAKER LLC  
and JMBAKER LLC,  
Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM  
(formerly known as ARTESIA BANKING CORP., SA),  
Defendants.

No.: 04-CV-10501 (PBS)

**PLAINTIFFS' NOTICE OF SUBSTITUTION OF EXHIBITS TO MOTION TO COMPEL  
DOCUMENTS WITHHELD OR REDACTED BY DEXIA UNDER  
IMPROPER CLAIMS OF ATTORNEY-CLIENT PRIVILEGE AND  
WORK PRODUCT PROTECTION**

All Plaintiffs in the above-captioned actions (collectively, "Plaintiffs") submit this notice of substitution of exhibits, which supplements their Motion to Compel the Production of Documents from Dexia Bank Belgium ("Dexia"). This motion is scheduled for hearing before this Honorable Court tomorrow, October 5, 2006 at 11:00 a.m.

## **I. BACKGROUND**

On June 16, 2006, Plaintiffs filed a Motion to Compel Dexia to produce documents that it withheld under improper claims of attorney-client privilege and work product ("the June 16, 2006 Motion to Compel"). Following discussions among counsel for Dexia and Plaintiffs, Dexia's revisions to its voluminous privilege logs, and Dexia's production and agreement to produce numerous documents that it initially withheld, Plaintiffs have been able to narrow their objections to Dexia's overbroad designations of attorney-client privilege and attorney work product protection. Attached hereto are charts that illustrate Plaintiffs' revised objections to Dexia's claims of privilege and protection. Plaintiffs ask the Court to substitute these exhibits for those attached to the June 16, 2006 Motion to Compel. At tomorrow's hearing on the June 16, 2006 Motion, Plaintiffs intend to assert the arguments in their June 16, 2006 Motion to Compel against the attached exhibits of privilege log entries, in lieu of those exhibits and entries attached to the June 16, 2006 Motion.

## **II. THE SUPPLEMENTAL CHARTS**

Attached hereto are Plaintiffs' revised charts containing Plaintiffs' current objections to Dexia's designations of attorney-client privilege and work-product protection. Plaintiffs request that the Court substitute the attached exhibits in place of the exhibits attached to the June 16, 2006 Motion to Compel.

**1. Revised Exhibit A – “Third Party Communications” – (See June 16, 2006 Motion to Compel, Section B.1).**

Voluntary disclosure of even privileged documents to third parties destroys any claim of privilege. See In re Grand Jury Subpoena, 925 F.Supp. 849, 855 (D. Mass. 1995) (Saris, J.) (“a voluntary disclosure of information which is inconsistent with the confidential nature of the attorney-client relationship waives the privilege”) (citation omitted). The documents in “Revised Exhibit A” are communications to, from, or between one or more third parties outside of the attorney-client relationship.

**2. Revised Exhibit B – “Communications of Non-Attorney Employees” – (See June 16, 2006 Motion to Compel, Section B.2).**

The documents in “Revised Exhibit B” consist of communications exclusively between Dexia employees who are not attorneys and communications from non-attorneys where Dexia claims that those non-attorneys provided legal advice. None of these documents should have been withheld from production. See Pasteris v. Robillard, 217 F.R.D. 18, 20 (D. Mass. 1988); Pacamor Bearings, Inc. v. Mineber Co., Ltd., 918 F.Supp. 491, 511 (D. N.H. 1996); Sneider v. Kimberly-Clark Corp., 91 F.R.D. 1, 5 (N.D. Ill. 1980).

**3. Combined and Revised Exhibits G and I – “No Author Identified or No Recipient Identified” (See June 16, 2006 Motion to Compel, Section C).**

A party claiming privilege must, at a minimum, provide the author, recipient, and date of each document purportedly covered. Colonial Gas Co. v. Aetna Casualty & Surety Co., 144 F.R.D. 600, 610 (D. Mass. 1992). “Combined and Revised Exhibits G and I” reflects the documents that Dexia withheld for which it has failed to list an author or a recipient.

Accordingly, Plaintiffs respectfully request that the Court substitute the attached exhibits for the exhibits attached to the June 16, 2006 Motion to Compel.

Dated: October 4, 2006

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Steven T. Voigt, certifies pursuant to 28 U.S.C. § 1746, as follows:

On October 4, 2006, I caused a true and correct copy of

**PLAINTIFFS' NOTICE OF SUBSTITUTION OF EXHIBITS TO MOTION TO COMPEL  
DOCUMENTS WITHHELD OR REDACTED BY DEXIA UNDER  
IMPROPER CLAIMS OF ATTORNEY-CLIENT PRIVILEGE AND  
WORK PRODUCT PROTECTION**

to be served by electronic delivery and overnight priority delivery upon the following counsel of  
record for Dexia Bank Belgium at the address indicated below:

Jeff E. Butler, Esq.  
Clifford Chance US LLP  
31 West 52<sup>nd</sup> Street  
New York, NY 10019

I declare under penalty of perjury that the foregoing is true and correct. Executed this  
4th day of October 2006.

/s/ Steven T. Voigt  
Steven T. Voigt